RICHMOND ICE CO. v. CRYSTAL ICE CO.

January 26, 1905.

[49 S. E. 650.]

LANDLORD AND TENANT—DESTRUCTION OF BUILDINGS—LIABILITY FOR RENT—STATUTE—JURY QUESTION—INSTRUCTION—ARGUMENT OF COUNSEL—REMARK OF COURT—ERROR.

1. In an action for rent error cannot be based on the cross-examination of one of defendant's witnesses over the objection that the lease was in writing, and could not be contradicted or varied by parol, where the cross-examination was not as to the contents of the lease, but as to the purpose for which defendant had leased the premises.

2. Where, in an action for rent, there was evidence that the premises were rented merely to get an objectionable competitor of defendant out of business, counsel for plaintiff had a right to comment thereon in argument, though the testimony of a witness to show such fact had been excluded.

3. Where there was evidence as to what purpose the premises were rented for, but the testimony of a witness to show such fact had been excluded by the court, there was no error prejudicial to defendant in the court stating that the evidence was improperly excluded, when objection was made by defendant to a comment on such fact by counsel for plaintiff in argument to the jury.

4. Under the direct provisions of Code 1887, sec. 2455 [Va. Code 1904, p. 1207], the reduction in rent to which the tenant is entitled on the destruction of leased buildings without his fault is the diminished value of the leased premises to the tenant for his purposes.

5. Charges requested, which are covered by the instructions given, are properly refused.

6. In an action for rent, where the tenant relied on Code 1887, sec. 2455 [Va. Code 1904, p. 1207], providing that in case of the destruction of leased buildings without fault on the part of the tenant he shall be entitled to a reduction in rent equal to the diminished value of the leased premises for his purposes, and the evidence showed that the premises had been rented to keep a competitor from using them, it sustained a finding that the value of the leased premises for the tenant's purposes had not been diminished during the period in which the rent demanded accrued.

STULTZ v. PRATT.

February 2, 1905.

[49 S. E. 654.]

QUO WARRANTO—RETURN OF WRIT—RETURN TO SPECIAL TERM—STATUTES.

Va. Code 1904, p. 1633, sec. 3060, provides, in section 3062, that there may be tried at special term any civil case not tried at the last preceding term, any motion cognizable by the court, any criminal case which could be tried at a regular term, and any controversy ready for hearing at law or in chancery, though it